

## MINUTES

### SUPREME COURT'S ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT

Administrative Office of the Courts  
230 South 500 East, Ste. 300  
Salt Lake City, Utah 84102

May 20, 1996

#### PRESENT

Stephen Hutchinson  
Gary Sackett  
Thomas Kay  
Carolyn McHugh  
Kent Roche  
Gary Chrystler  
Earl Wunderli  
Robert Burton  
William Hyde

#### ABSENT

Commissioner Tom Arnett  
Stephen Trost  
Professor John Morris  
Judge Ronald Nehring

#### GUESTS

Kim Christy

#### STAFF

Brent Johnson

**I. Welcome and Approval of Minutes.** Stephen Hutchinson, serving as Acting Chair, welcomed the Committee members to the meeting. Earl Wunderli moved to approve the minutes of the March 25, 1996 meeting. Robert Burton seconded the motion. The motion carried unanimously.

**II. Rule 1.13.** Mr. Hutchinson noted that several comments had been received on proposed Rule 1.13, Organization as Client. Earl Wunderli questioned whether it is traditional to send the rule back to the rules subcommittee after comments have been received. Mr. Hutchinson stated that the rule will be sent back to the subcommittee if the comments are substantive and significant.

Carolyn McHugh stated that all of the comments focus on the requirement of having an injury and a benefit to the organization. Ms. McHugh suggested changing "and" to "or." Gary Sackett stated that the Committee had discussed this issue before and agreed that these issues must be tied together. Mr. Sackett noted that the rule does not try to cover all situations and the Committee had previously struggled with this. The Committee had decided that it was better to have this rule than no rule.

William Hyde noted that Steve Johnson's comments addressed whistle-blowing events and these are outside the scope of this rule. Mr. Hyde also noted the Legislature's concern and stated his belief that the Legislature's concern was already addressed in the way that the rule is written.

After brief discussion, Gary Chrystler moved to send the rule back

to the subcommittee for review of the comments. Ms. McHugh seconded the motion. The motion carried unanimously.

**III. Rule 3.6.** Thomas Kay stated that the subcommittee had looked at Rule 3.6, Trial Publicity, and wanted further instruction from the Committee. Mr. Kay stated that the ABA model rule had been changed and the model rule no longer lists every possible way that an attorney can violate the rule. Mr. Kay stated that the new subparagraph (c) also allows a lawyer to respond when necessary to protect a client.

Ms. McHugh noted that the current rule ties an attorney's hands if the other side is making outrageous comments. Mr. Kay agreed and noted that he was involved in the Halcion case in which the plaintiff's attorneys were commenting to the press but the defendants could do nothing.

Mr. Wunderli questioned Mr. Kay as to why the ABA had revised Rule 3.6. Mr. Kay stated that this was a normal process of revising the rules. Ms. McHugh noted that there may be other revised rules which the Committee should be aware of. Staff was instructed to attempt to find an electronic version of the ABA model rules and do a comparison.

**IV. Trust Account Rule.** Gary Chrystler stated that the rules subcommittee wanted instruction from the Committee as to how to proceed on a trust account rule. Mr. Chrystler noted that there doesn't seem to be a significant cost involved in providing notice to the Bar of overdrawn accounts, and the banks can pass on costs to the attorney.

Mr. Hutchinson noted that the same issues concerning costs were evident when IOLTA was an issue. Mr. Hutchinson stated that the IOLTA program was originally designed as an opt-out program, but because of opposition from the banks, it was changed to an opt-in program.

Mr. Wunderli questioned what the banking industry thought of the trust account rule. Mr. Sackett stated that there was organized opposition when the rule was sent out for public comment approximately a year and one half ago.

Mr. Kay suggested that the subcommittee find out from other states that have a similar rule what the cost of running the program is and how these costs are distributed. Mr. Sackett noted that the rule cannot bind banks, but can only bind attorneys, and therefore the Committee cannot put in the rule the requirement that the bank should pass on the costs to the attorneys. Ms. McHugh noted that the model rule states that the rule does not preclude a bank from charging a fee. The rules subcommittee was instructed to review the rule that was proposed approximately a year and one half ago and to work with the banking industry to resolve concerns.

**V. Rule 7.** Mr. Kay noted that the rules subcommittee decided that a new subcommittee should be formed to address advertising rules. This issue will be held over until the next meeting so that the Committee chair may form the new subcommittee.

**VI. Michie Company Omissions.** Mr. Hutchinson noted that the Michie Company omitted the comment and code comparison for Rule 1.14. Staff was instructed to notify Michie of the omission. Mr. Hutchinson also noted that the code comparison for Rule 4.2 is out of date and the rules subcommittee was instructed to re-review this code comparison.

**VII. Adjourn.** There being no further business, Gary Sackett moved to adjourn the meeting. Gary Chrystler seconded the motion. The meeting was adjourned at 6:30 p.m.